



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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March 17, 2015

Kevin Tolliver
Indiana State Prison
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 15-FC-58; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Mr. Tolliver,

This advisory opinion is in response to your formal complaint alleging the Elkhart County Sheriff Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. James L. Bradberry, Captain, has responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 16, 2015.

BACKGROUND

Your complaint dated February 12, 2015 alleges the Elkhart County Sheriff's Department violated the Access to Public Records Act by refusing to provide the requested documents.

On January 28, 2015, you submitted a public records request to the Department, requesting any reports relating to your case.

On February 6, 2015, the Department responded to your public access request. The department refused to release the full report, as you requested, claiming portions of the report are investigatory. However, you were invited to appear in person to view the disclosable portions of the record. You contend that because you are incarcerated and unable to appear in person, this is an attempt to deny you access to your records.

On February 25, Capt. Bradberry replied to your complaint. Capt. Bradberry reaffirms the Department's stance on the investigatory nature of your record, but is willing to send you

the public portion of your record, provided you send a self-addressed envelope and a payment of three dollars (\$3.00) to the Elkhart County Sheriff's Department.

ANALYSIS

The public policy of the APRA states that "a (p)roviding person with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Elkhart County Sheriff's Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

With regards to the specific case, Capt. Bradberry's refusal of the initial request appears appropriate. The APRA provides discretion to investigatory agencies not to disclose information related to their investigations. You contend, however, the request for in-person inspection of the records is an attempt to deny you access to his records due to your incarcerated status.

That does not appear to be the case. Capt. Bradberry appears to have been using a form letter to respond to you and the shortcoming was failing to amend one section of his response. In his second letter, Capt. Bradberry does amend his letter and is willing to accommodate you to the extent possible. Remittance of the copy fee appears to be the only requirement for production of the records.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Elkhart County Sheriff's Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", with a stylized flourish extending from the bottom left.

Luke H. Britt
Public Access Counselor

Cc: Mr. James L. Bradberry, Capt.